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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Equal Employment Opportunity Commission,

10 Plaintiff,

11 vs.

12 Go Daddy Software, Inc.,

13 Defendant.

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No. CV 04-2062-PHX-DGC

**ORDER**

16 On December 15, 2006, the jury returned a verdict in Plaintiff's favor on a Title VII  
 17 retaliation claim and awarded \$5,000 in compensatory damages, \$250,000 in punitive  
 18 damages, and an advisory verdict of \$135,000 in back pay. Defendant has filed a Motion for  
 19 Judgment as a Matter of Law Pursuant to Rule 50(b), and/or Motion for New Trial Pursuant  
 20 to Rule 59(a). Dkt. #196. Plaintiff has filed a Motion Regarding Back Pay, Record Keeping  
 21 and Equitable Relief. Dkt. #197. For the reasons set forth below, the Court will grant  
 22 Defendant's motion with respect to the statutory cap on compensatory and punitive damages,  
 23 deny the remainder of Defendant's motion, and grant Plaintiff's motion in part.

24 **I. Defendant's Motion.**

25 **A. Motion for Judgment as a Matter of Law – Protected Activity.**

26 Pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, Defendant asks the  
 27 Court to grant judgment in its favor on Plaintiff's retaliation claim. Defendant first argues  
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1 that the evidence presented at trial was insufficient to demonstrate that Youseff Bouamama  
2 engaged in protected activity. Dkt. #196 at 3-5.

3 Defendant made a Rule 50(a) motion at the close of the evidence. Although  
4 Defendant asked the Court to enter judgment as a matter of law on Plaintiff's retaliation  
5 claim, Defendant did not argue that the motion should be granted because Plaintiff failed to  
6 present sufficient evidence of a protected activity. The sole basis for Defendant's motion  
7 was that Plaintiff had failed to present evidence that Ms. Slezak told other members of the  
8 promotion panel (Mr. Franklin and Mr. Villeneuve) about Plaintiff's discrimination  
9 complaints. Transcript, 12-15-06 at 140-41. "A party cannot raise arguments in its post-trial  
10 motion for judgment as a matter of law under Rule 50(b) that it did not raise in its pre-verdict  
11 Rule 50(a) motion." *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003).  
12 Because Defendant failed to argue that Plaintiff had presented insufficient evidence of a  
13 protected activity, Defendant may not make that argument now. *Id.*

14 **B. Motion for Judgment as a Matter of Law – Insufficient Evidence of Nexus.**

15 Defendant argues that Plaintiff failed to present sufficient evidence that Mr.  
16 Bouamama's termination was caused by retaliation for his protected activity. In ruling on  
17 this argument, the Court must apply the same standard as it would in granting summary  
18 judgment. Judgment may be entered for Defendant only if Plaintiff failed to present  
19 sufficient evidence for a reasonable jury to rule in Plaintiff's favor. In making this  
20 determination, "the court must draw all reasonable inferences in favor of [Plaintiff], and it  
21 may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson*  
22 *Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

23 Defendant first argues that Plaintiff failed to prove causation because the decision to  
24 eliminate Mr. Bouamama's position was made before he engaged in any protected activity.  
25 Defendant next argues that any causal link between Mr. Bouamama's protected activity and  
26 his termination was broken by Mr. Parson's offer of an opportunity to qualify for an analyst  
27  
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1 position. Because Defendant failed to make these arguments in its Rule 50(a) motion at the  
2 close of the evidence, it cannot make them now. *Freund*, 347 F.3d at 761.<sup>1</sup>

3 Defendant also argues that Plaintiff presented insufficient evidence that the decision-  
4 maker responsible for terminating Mr. Bouamama was aware of his protected activity. The  
5 Court disagrees. Mr. Bouamama testified that he was terminated by Mr. Franklin and Ms.  
6 Slezak. He also testified that he complained to Ms. Slezak about discriminatory conduct by  
7 Mr. Franklin only days before his termination. Viewing the evidence in the light most  
8 favorable to Plaintiff and drawing all reasonable inferences in its favor, the Court concludes  
9 that the jury reasonably could have found that both Mr. Franklin and Ms. Slezak were aware  
10 of the protected activity and that their termination of Mr. Bouamama was in response to that  
11 activity.

#### 12 **C. Motion for New Trial Based on the Weight of the Evidence.**

13 Defendant asks the Court to grant a new trial under Rule 59(a) because the jury's  
14 verdict is against the clear weight of the evidence. The Ninth Circuit has provided the  
15 following guidance for ruling on such a motion:

16 "a decent respect for the collective wisdom of the jury, and for the function  
17 entrusted to it in our system, certainly suggests that in most cases the judge  
18 should accept the findings of the jury, regardless of his own doubts in the  
matter. . . . If, having given full respect to the jury's findings, the judge on the

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19 <sup>1</sup> Defendant did not make these arguments in its Rule 50(a) motion, but it did argue  
20 that Plaintiff had failed to prove a connection between the protected activity and Mr.  
21 Bouamama's termination. Even if the Court were to take a liberal view of Defendant's  
22 Rule 50(a) motion, however, these arguments are not well-taken. First, as Plaintiff correctly  
23 notes, the jury found that Defendant's retaliation resulted in Mr. Bouamama's termination,  
24 not in the elimination of his position as Inbound Sales Manager. Defendant presented no  
25 evidence that the decision to terminate Mr. Bouamama was made before he engaged in  
26 protected activity. Indeed, Defendant claimed that Mr. Bouamama was not terminated at all.  
27 Second, whether any causal link between the protected activity and the termination was  
28 broken by Mr. Parson's offer of an analyst position was a question of fact for the jury to  
decide. The jury clearly chose to disbelieve Defendant's assertion that it did not terminate  
Mr. Bouamama, and also could reasonably have chosen to disbelieve Defendant's assertion  
that Mr. Bouamama genuinely was offered an opportunity to qualify for an analyst position.  
The jury also could have concluded that Mr. Franklin and Ms. Slezak decided to terminate  
Mr. Bouamama as a result of his protected activity regardless of the analyst opportunity.

1 entire evidence is left with the definite and firm conviction that a mistake has  
2 been committed, it is to be expected that he will grant a new trial.”

3 *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371-72 (9th Cir. 1987)  
4 (citing C. Wright & A. Miller, *Federal Practice and Procedure* § 2806, at 48-49 (1973)).

5 Having considered all of the evidence presented at trial, the Court does not conclude  
6 that a new trial is warranted. Mr. Bouamama testified that he complained to Ms. Slezak on  
7 more than one occasion about conduct he believed to be discriminatory. This conduct  
8 included Mr. Franklin’s inquiry about his religion and national origin and Mr. Franklin’s  
9 responsive comment that Mr. Bouamama was lucky Mr. Franklin liked him. Mr. Bouamama  
10 testified that he was terminated by Ms. Slezak and Mr. Franklin within a matter of days of  
11 his last complaint. The evidence suggested that other individuals denied a promotion to a  
12 Sales Supervisor position were offered continuing positions on the sales floor. Although  
13 Defendant claimed to have made the same offer to Mr. Bouamama, the jury chose to believe  
14 Mr. Bouamama’s testimony that he was not given such an option, but instead was terminated  
15 by Ms. Slezak and Mr. Franklin. Mr. Bouamama further testified that he was immediately  
16 escorted out of the building by Ms. Slezak. From this and other evidence, the jury could  
17 have concluded that Mr. Bouamama was terminated in retaliation for his complaints about  
18 conduct by Mr. Franklin that he regarded as discriminatory. The issue is not whether the  
19 Court would have reached that conclusion, but whether the Court is left with a definite and  
20 firm conviction that a mistake has been committed. Mindful of the respect that must be  
21 afforded the collective wisdom of the jury, the Court does not conclude that such a mistake  
22 occurred in this case.

23 **D. Motion for New Trial Based on Back Pay and Punitive Damages.**

24 Defendant argues that the Court should hold a new trial because the jury awarded Mr.  
25 Bouamama \$135,000 in back pay. The back pay verdict, however, is merely advisory. The  
26 question of back pay is an equitable remedy for the Court to decide. The jury’s advisory  
27 verdict certainly is not a basis for a new trial.  
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1 Defendant also argues that the jury's award of \$250,000 in punitive damages requires  
2 a new trial. The Court does not agree. Defendant correctly notes that punitive damages are  
3 warranted only if Plaintiff proves that Defendant acted with malice or reckless indifference  
4 to Mr. Bouamama's federally protected rights. Dkt. #196 at 12 (*citing Kolstad v. Am. Dental*  
5 *Ass'n.*, 527 U.S. 526, 535 (1999)). The Court concludes, however, that a jury reasonably  
6 could have found that this standard was satisfied by Plaintiff's evidence. The most  
7 prominent actor in Plaintiff's claim of retaliation was Ms. Slezak. According to Plaintiff's  
8 evidence, she was the individual to whom Mr. Bouamama complained, one of two  
9 individuals who terminated Mr. Bouamama, and the individual who escorted Mr. Bouamama  
10 from the building. She was also Defendant's director of human resources and an individual  
11 trained in discrimination law. If the jury accepted Mr. Bouamama's claim of her  
12 involvement in his retaliation, the jury also could have concluded that she acted with reckless  
13 indifference to the federally protected rights of which she clearly was aware.

14 **E. Statutory Cap on Compensatory and Punitive Damages.**

15 Defendant contends that it qualifies for the \$200,000 statutory cap on compensatory  
16 and punitive damages in 42 U.S.C. § 1981a(b)(3)(C) because it had between 200 and 500  
17 employees on the date of Mr. Bouamama's termination. Defendant cites several cases for  
18 the proposition that the applicable number of employees must be determined during the year  
19 the discriminatory act took place, not during the year in which the Court's judgment is  
20 rendered. *See, e.g., Vance v. Union Planters Corp.*, 209 F.3d 438, 446 (5th Cir. 2000).  
21 Plaintiff cites no authority to the contrary.

22 Plaintiff argues that Defendant has failed to present sufficient evidence that it had  
23 fewer than 500 employees in each of 20 or more calendar weeks in the year of Mr.  
24 Bouamama's termination, as required by the statute. Dkt. #199. Ms. Slezak testified without  
25 contradiction, however, that Defendant had approximately 45 employees when she started  
26 with the company in December of 2001 and just over 200 employees when Mr. Bouamama  
27 was terminated in April of 2003. Dkt. #187 at 132-33. This is sufficient evidence that  
28 Defendant had fewer than 500 employees during 20 or more weeks in the year in which Mr.

1 Bouamama was terminated or in the preceding year. The jury's award of compensatory and  
2 punitive damages will therefore be capped at \$200,000.

3 **II. Plaintiff's Motion.**

4 **A. Record keeping.**

5 Section 709(c) of Title VII requires employers to "make and keep such records  
6 relevant to the determinations of whether unlawful employment practices have been or are  
7 being committed" and "preserve such records for such periods . . . as the Commission shall  
8 prescribe by regulation[.]" 42 U.S.C. § 2000e-8(c). EEOC regulations provide that "[a]ny  
9 personnel or employment record made or kept by an employer . . . shall be preserved by the  
10 employer for a period of one year from the date of making the record or the personnel action  
11 involved, whichever occurs later." 29 C.F.R. § 1602.14 (2000). The regulation also provides  
12 that the "employer shall preserve all personnel records relevant to the charge or action until  
13 . . . final disposition of the charge or action." *Id.*

14 Plaintiff argues that Defendant violated these requirements by not preserving the 28  
15 two-page interview questionnaires completed by Messrs. Franklin and Villeneuve during the  
16 Sales Supervisor selection process. Dkt. #197 at 2. Ms. Slezak testified that she initially  
17 retained these documents, but somehow later misplaced them. Ms. Slezak also testified that  
18 she knew she should have preserved the records.

19 Defendant counters that the interview questionnaires were insignificant sketches of  
20 the interviewers' impressions that were used to complete a one-page summary sheet that  
21 ranked each of the candidates. Dkt. #198 at 2. Defendant claims the interview sheets were  
22 merely rough drafts of the final ranking sheet. *Id.* In the case cited by Defendant, the  
23 Seventh Circuit ruled that a company did not err in disposing of individual ranking sheets by  
24 different reviewers that were then used to create a composite, final ranking sheet. *See*  
25 *Rummery v. Illinois Bell Telephone Co.*, 250 F.3d 553, 558-59 (7th Cir. 2001). This case is  
26 different, however, because Defendant disposed of interview questionnaires consisting of  
27 nine questions, not merely individual numerical rankings that were used to produce a one-  
28 page summary ranking sheet. Although the information used in making the ranking sheet

1 came from the questionnaires, the questionnaires were not merely rough drafts of the final  
2 ranking. *See Favors v. Fisher*, 13 F.3d 1235, 1239 (8th Cir. 1994) (finding company  
3 obligated to retain a ten-question test administered to candidates for promotion). The Court  
4 finds that Defendant failed to comply with the recordkeeping requirements of 29 C.F.R.  
5 § 1602.14. The Court also finds, however, that the failure was inadvertent. This fact will be  
6 taken into account in fashioning an appropriate remedy.

7 **B. Back Pay.**

8 Plaintiff asks the Court to award \$135,000 in back pay to Mr. Bouamama, consistent  
9 with the jury's advisory verdict. Dkt. #194. Victims of discrimination are entitled to back  
10 pay under Title VII. *See* 42 U.S.C. § 2000e-5(g)(1); *Caudle v. Bristow Optical Co.*, 224 F.3d  
11 1014, 1020 (9th Cir. 2000). Mathematical certainty is not necessary. *Kaplan Int. Alliance*  
12 *of Theatrical and Stage Employees*, 525 F.2d 1354, 1362-63 (9th Cir. 1975).

13 Mr. Bouamama testified at trial that he lost wages of between \$120,000 and \$150,000.  
14 He arrived at these numbers by projecting the amount he would have made had he stayed in  
15 Defendant's employ at a salary of \$46,000. Using information from his W-2 tax forms, he  
16 then deducted wages he earned at Midland Credit Management after his termination.  
17 Defendant presented no evidence on the amount of Mr. Bouamama's lost pay.

18 Defendant argues that Plaintiff provided insufficient evidence of back pay. Dkt. #198  
19 at 3. Because any evidence of back pay was testimonial and partially based on W-2 forms  
20 not admitted into evidence, Defendant claims that "the jury's proposed back pay award of  
21 \$135,000.00 is not supported by the evidence, is contrary to the law, and a new trial must be  
22 granted." *Id.* at 4. In support, Defendant recites the definition of back pay, which is the  
23 "difference between actual earnings for the period and those which [Mr. Bouamama] would  
24 have earned absent the discrimination by defendant." *Gotthardt v. Nat'l R.R. Passenger*  
25 *Corp.*, 191 F.3d 1148, 1158 (9th Cir. 1999). Defendant concludes that "Plaintiff failed to  
26 provide evidence of either figure – Bouamama's actual earnings after leaving Go Daddy or  
27 Bouamama's income had he remained." Dkt. #198 at 4.



1 As an initial matter, the Court notes again that the jury's advisory verdict is no basis  
2 for a new trial. Defendant can urge the Court to reject the advisory verdict or can present  
3 additional arguments regarding the appropriate amount of back pay, but the advisory verdict  
4 is not a basis for trying this case anew.

5 Addressing the first issue – Mr. Bouamama's earnings after termination – Defendant  
6 cites *Taylor v. Philips Indus. Inc.*, 593 F.2d 783, 787 (7th Cir. 1979), for the proposition that  
7 back pay damages are not available when the plaintiff cannot provide any evidence of actual  
8 earnings following her discharge. But Plaintiff did provide evidence of Mr. Bouamama's  
9 earnings after discharge. Unlike *Taylor*, Mr. Bouamama testified that he used his post-  
10 termination W-2 forms to mitigate the back pay award he sought. Defendant presented no  
11 evidence to the contrary.

12 Addressing the second component of the back pay determination – Mr. Bouamama's  
13 income had he remained at Go Daddy – Defendant argues that Plaintiff did not provide  
14 evidence that Mr. Bouamama would have continued to make \$46,000 per year. Defendant  
15 notes that Mr. Bouamama's position of Inbound Sales Manager was eliminated and asserts  
16 that there is no reliable measure of how much he would have made in a new position. Dkt.  
17 #198 at 5.

18 The Court agrees with part of Defendant's argument. The evidence at trial established  
19 that Mr. Franklin embarked upon a significant reorganization of Defendant's sales operation  
20 immediately upon his arrival, including elimination of the Inbound Sales Manager position.  
21 This decision was made before Mr. Bouamama's protected activity. Mr. Bouamama and a  
22 number of other affected employees applied for several new Sales Supervisor positions that  
23 were to be created as part of the reorganization. Mr. Bouamama claimed that he was denied  
24 the new position because of his religion and national origin, but the jury rejected this claim.  
25 Dkt. #194. The jury also found that Mr. Bouamama would have been denied the Sales  
26 Supervisor job even if his protected activity had played no role in Defendant's decision. *Id.*  
27 The undisputed evidence further demonstrated that employees who were not promoted to  
28 Sales Supervisor were offered positions on the sales floor as Sales Representatives. Thus,



1 had no unlawful retaliation occurred, Mr. Bouamama's Inbound Sales Manager position  
2 would have been eliminated, he would not have received the Sales Supervisor position, and  
3 he, like the other unsuccessful applicants, would have been offered a position as Sales  
4 Representative.

5 Given these facts, Mr. Bouamama would not have continued to make \$46,000 dollars  
6 per year had he remained with Defendant. The undisputed evidence at trial demonstrated that  
7 unsuccessful applicants who accepted Sales Representative positions received a cut in pay.  
8 Trial Exs. 96-99; Transcripts, 12-13-06 at 19-21; 12-14-06 at 247-48. Some of the  
9 unsuccessful applicants received \$14.40 per hour. Dkt. #201 at 5 n. 2. Although the parties  
10 presented no evidence concerning the amount Mr. Bouamama would have received had he  
11 become a Sales Representative, the Court finds it reasonable to conclude he too would have  
12 been paid \$14.40 per hour.

13 Using this amount, the Court will award Mr. Bouamama a total of \$36,552 in back  
14 pay. This figure includes two components: (1) \$14.40 per hour of back pay during the eleven  
15 months Mr. Bouamama was unemployed after his termination by Defendant, and (2) \$1.40  
16 per hour for the remaining time up to the present, during which he has been employed by  
17 Midland Credit Management at \$13.00 per hour. Trial Ex. 282. The Court arrived at \$1.40  
18 per hour by subtracting Mr. Bouamama's Midland wage of \$13.00 per hour from the \$14.40  
19 he would have earned had he become a Sales Representative at Defendant.<sup>2</sup>

20 Plaintiff also seeks to recover pre-judgment interest on the back pay award. Dkt. #197  
21 at 5. An award of prejudgment interest serves the goal of making an employee whole after  
22 a defendant has violated Title VII. *See Ford v. Alforo*, 785 F.2d 835, 842 (9th Cir. 1986).  
23 Plaintiff computed this interest to be \$19,043 based on the IRS prime rate and a back pay  
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25 <sup>2</sup> The Court recognizes that Mr. Bouamama might have received raises in the more  
26 than three years since he would have become a Sales Representative at Defendant, but  
27 Plaintiff presented no evidence concerning the likely amount of such raises. Nor did Plaintiff  
28 present evidence to show that Mr. Bouamama's earning potential would have been greater  
at Defendant than at Midland Credit Management.

1 award of \$135,000. The Court has taken judicial notice of the IRS interest rates used for  
2 computation of back pay (Dkt. #197, Ex. 5) and has reviewed Plaintiff's methodology in  
3 determining the amount of interest, which the Court finds reasonable. The Court has reduced  
4 the prejudgment interest proportionately with the reduction of back pay and will award  
5 \$5,156 of prejudgment interest.

6 **C. Reinstatement and Front Pay.**

7 Plaintiff asks the Court to reinstate Mr. Bouamama to a position comparable in pay  
8 and responsibility to Inbound Sales Manager. Dkt. #197 at 6. Alternatively, Plaintiff asks  
9 the Court to award Mr. Bouamama three years of front pay at \$46,000 per year. *Id.* at 7.

10 Reinstatement is preferred to front pay under Title VII. *See Cassino v. Reichold*  
11 *Chems., Inc.*, 817 F.2d 1338, 1346 (9th Cir. 1987). Front pay is appropriate when  
12 reinstatement is not viable for reasons such as antagonism between the parties or when no  
13 position is available due to a reduction in force. *Id.*; *see also Thorne v. City of El Segundo*,  
14 802 F.2d 1131, 1137 (9th Cir. 1986); *Cancellier v. Federated Dept. Stores*, 672 F.2d 1312,  
15 1319 (9th Cir. 1982). Ultimately, reinstatement is not a mandatory remedy, but rather "lies  
16 within the discretion of the trial court after careful consideration of the particular facts of the  
17 case." *Id.*

18 Defendant argues that Mr. Bouamama is not entitled to reinstatement as Inbound Sales  
19 Manager or a comparable position because "[t]he undisputed evidence in the trial record  
20 establishes that Go Daddy eliminated the Inbound Sales Manager position *before* Bouamama  
21 allegedly engaged in protected activity." *Id.* (emphasis in original). The Court agrees. As  
22 explained above, the evidence and jury verdict confirm that if no retaliation had occurred,  
23 Mr. Bouamama's Inbound Sales Manager position would have been eliminated, he would  
24 not have received the Sales Supervisor position, and he would have been offered a position  
25 as Sales Representative. If the Court were to order reinstatement, therefore, it would be to  
26 the lower position of Sales Representative.

27 The Court concludes, however, that such reinstatement is not warranted. Sales  
28 Representative is not truly the position Mr. Bouamama seeks. Plaintiff presented evidence

1 that Mr. Bouamama had been promoted beyond the position of Sales Representative some  
2 time before the events at issue in this case, and Mr. Bouamama complained at trial that he  
3 was not given the higher position of Sales Supervisor. The evidence further suggested that  
4 Mr. Bouamama's previous work as a Sales Representative had been less than fully  
5 satisfactory for him and his supervisors. In addition, Mr. Bouamama has been employed  
6 since 2004 with Midland Credit Management and presented no evidence to suggest that he  
7 has a less promising future with that company than he would have as a Sales Representative  
8 at Defendant. What is more, Mr. Bouamama has made accusations of discrimination against  
9 managers still at Defendant, has been engaged in litigation against Defendant for several  
10 years, and will recover substantial actual and punitive damages in this case. All of these facts  
11 convince the Court that reinstatement is neither warranted nor wise. *See Cassino*, 817 F.2d  
12 at 1347 (denying reinstatement because of hostility between the parties); *Cancellier*, 672  
13 F.2d at 1319-20 (denying reinstatement because of history of acrimony toward plaintiff and  
14 because plaintiff's verdict was sufficient to make plaintiff whole).

15 Plaintiff alternatively seeks front pay of \$46,000 for three years. Such an award is  
16 clearly unwarranted given Mr. Bouamama's current employment at Midland Credit  
17 Management and the fact that his position as Inbound Sales Manager was eliminated before  
18 he engaged in protected activity. Moreover, Plaintiff presented no evidence from which the  
19 Court could conclude that his future earning potential at Midland would be less than his  
20 potential at Defendant. This lack of evidence was conceded by Plaintiff's counsel during  
21 trial. Transcript, 12-15-06 at 6. Had Plaintiff presented evidence on the issue of front pay,  
22 the Court would have sought an advisory verdict from the jury. Given the absence of such  
23 evidence, however, the Court concluded not to seek such a verdict, a decision with which  
24 Plaintiff's counsel agreed. *Id.* Because Plaintiff presented no evidence of lost future  
25 earnings on the part Mr. Bouamama, the Court will deny Plaintiff's request for an award of  
26 front pay.

**D. Non-Monetary Equitable Relief.**

Plaintiff requests several types of non-monetary equitable relief. *See* Dkt. #197 at 8-10. When an employer engages in an unlawful employment practice, a court may “enjoin [the employer] from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include . . . any . . . equitable relief as the court deems appropriate.” 42 U.S.C. § 2000e-5(g)(1). “[T]he district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.” *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975). “Generally, a person subjected to employment discrimination is entitled to an injunction against future discrimination unless the employer proves it is unlikely to repeat the practice.” *EEOC v. Goodyear Aerospace Corp.*, 813 F.2d 1539, 1544 (9th Cir. 1987) (citations omitted).

Plaintiff first requests that the Court permanently enjoin Defendant from violating Title VII. Dkt. #197 at 9. Such an injunction would: “(1) instruct [Defendant] that it must comply with federal law, (2) subject it to the contempt power of the federal courts if it commits future violations, and (3) reduce the chilling effect of its alleged retaliation on its employees’ exercise of their Title VII rights.” *Goodyear*, 813 F.2d at 1544.

Defendant has not carried its burden of proving that it is unlikely to repeat the practice of retaliating against employees who engage in protected activity. Although Defendant states that one of the discriminators, Craig Franklin, is no longer with the company, other alleged discriminators remain. Evidence that Defendant has undertaken Title VII training and education programs fail to prove that no further Title VII violation will occur. *See id.* (stating that an “employer that takes curative actions only after it has been sued fails to provide sufficient assurances that it will not repeat the violation to justify denying an injunction). Finally, Defendant states that Plaintiff has not proven that Defendant retaliated against other employees either before or after Mr. Bouamama’s termination. But as the Ninth Circuit has made clear, it is Defendant’s burden, not Plaintiff’s to prove that discrimination

1 is unlikely to recur. *See id.* The Court will enjoin Defendants from further violating Title  
2 VII.

3 Second, Plaintiff requests that Defendant “be required to implement injunctive relief,  
4 including but not limited to employee training on Title VII and retaliation, post a notice  
5 regarding retaliation, review and/or revise its employment discrimination policies and  
6 reporting requirements.” Dkt. #197 at 9. Defendant responds that it is already conducting  
7 training of its employees. On the basis of the evidence presented at trial – evidence which  
8 demonstrated that Defendant employs a diverse work force and evidence which was devoid  
9 of any suggestion of other discriminatory activity – the Court is unwilling to interfere with  
10 Defendant’s voluntary Title VII compliance and finds this type of injunctive relief  
11 unnecessary. *See* 42 U.S.C. § 2000e-5(g)(1).

12 Third, Plaintiff requests that Defendant be required to post a notice stating its intent  
13 to comply with Title VII and advising employees of their rights for relief from  
14 discrimination. Dkt. #179 at 9. Plaintiff believes that “[ s]uch notice will serve the dual  
15 purpose of educating Go Daddy’s current and future employees regarding their rights and  
16 remedies under Title VII and reminding Go Daddy of its obligation to uphold those rights.”  
17 *Id.* The Court agrees. This type of injunctive relief is minimally intrusive, will provide clear  
18 expectations regarding Defendant’s conduct, and will identify remedies available to  
19 employees who might experience discrimination.

20 Fourth, Plaintiff asks the Court to require Defendant to comply with the recordkeeping  
21 requirements of 29 C.F.R. § 1602.14, as well as to advise the EEOC of all decisions covered  
22 by that regulation and to make all records available to the EEOC for inspection. *Id.* Because  
23 the Court finds that Defendant failed to follow the recordkeeping requirements in this case,  
24 the Court will order Defendant to comply with the requirements of 29 C.F.R. § 1602.14. The  
25 Court will not, however, order Defendant to advise the EEOC of all decisions covered by the  
26 regulation or to make all records available for EEOC inspection. The evidence at trial  
27 demonstrated to the Court’s satisfaction that the loss of records in this case was accidental,  
28

1 and the existing regulations and the Court's order will provide sufficient assurances that  
2 Defendant will not again violate the recordkeeping requirements.

3 Finally, Plaintiff asks the Court to impose monitoring and reporting requirements for  
4 two years. *Id.* at 10. The Court will deny this relief. The jury rejected Plaintiff's claim that  
5 Defendant discriminated on the basis of national origin or religion. Although the jury found  
6 that Defendant engaged in unlawful retaliation, one instance of such conduct in a company  
7 that has grown to over 1,300 employees does not warrant the imposition of monitoring and  
8 reporting requirements. The substantial monetary judgments imposed by this case, the  
9 injunctions that Defendant comply with Title VII and the recordkeeping regulations, and the  
10 requirement that Defendant post notices concerning Title VII compliance and relief constitute  
11 sufficient sanctions for the single instance of retaliation established at trial.

12 **IT IS ORDERED:**

- 13 1. Defendant's Motion for Judgment as a Matter of Law Pursuant to Rule 50(b),  
14 and/or Motion for New Trial Pursuant to Rule 59(a) (Dkt. #196) is **granted**  
15 with respect to the statutory cap on compensatory and punitive damages and  
16 **denied** with respect to all other requested relief.
- 17 2. Plaintiff's recovery of punitive and compensatory damages shall be reduced  
18 to a total of \$200,000, consisting of \$5,000 in compensatory and \$195,000 in  
19 punitive damages.
- 20 3. Plaintiff's Motion Regarding Back Pay, Recordkeeping and Equitable Relief  
21 (Dkt. #197) is **granted** in part and **denied** in part as set forth above.
- 22 4. Mr. Bouamama is awarded \$36,552 in back pay and \$5,156 in prejudgment  
23 interest.
- 24 5. Defendant is enjoined from retaliating against any employee who complains  
25 of discrimination, opposes any act or practice made unlawful by Title VII of  
26 the Civil Rights Act of 1964, or files a charge, testifies, assists, or participates  
27 in any manner in an investigation, proceeding, or hearing under Title VII.  
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6. Defendant shall comply with the recordkeeping requirements of 29 C.F.R. § 1602.14.

7. For a period of 12 months following entry of final judgment, Defendant shall post a notice to all employees in at least three prominent in-house locations frequented by Defendant's employees. The notice shall explain Defendant's responsibilities and the employees' rights under Title VII, including the employees' right to complain about or oppose discrimination free from retaliation, and shall provide the addresses and telephone numbers of the Phoenix office of the Equal Employment Opportunity Commission and the Arizona Civil Rights Division.

8. Within ten days of this order, Plaintiff shall lodge a proposed final judgment accurately reflecting the decisions in this order.

DATED this 6th day of April, 2007.

David G. Campbell

David G. Campbell  
United States District Judge